

## ARCHITECTURAL EXAMINING BOARD[193B]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 6, “Disciplinary Action Against Registrants,” Iowa Administrative Code.

The amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0, and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The amendments change terminology from registered/registration to licensed/licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3173C** on July 5, 2017. A public hearing was held on July 25, 2017. There were a few comments in response to the Notice. Most of the feedback consisted of questions regarding the timing of obtaining a new seal. Two responses were supportive, and one questioned whether “architect” needed any modifier. These amendments are identical to those published under Notice.

The amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The amendments were adopted by the Board on August 22, 2017.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

These amendments will become effective November 1, 2017.

The following amendments are adopted.

ITEM 1. Amend **193B—Chapter 6**, title, as follows:

#### DISCIPLINARY ACTION AGAINST ~~REGISTRANTS~~ LICENSEES

ITEM 2. Amend rule 193B—6.3(544A,272C) as follows:

**193B—6.3(544A,272C) Peer investigative committee.** A peer investigative committee may be appointed by the president to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the president, and shall have been ~~registered~~ licensed to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

ITEM 3. Amend rule 193B—6.4(544A,272C) as follows:

**193B—6.4(544A,272C) Investigation report.** Upon completion of the investigation, the investigator(s) shall prepare for the board’s consideration a report containing the position or defense of the ~~registrant~~ licensee to determine what further action is necessary. The board may:

1. No change.
2. Allow the ~~registrant~~ licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. and 4. No change.

ITEM 4. Amend rule 193B—6.5(544A,272C) as follows:

**193B—6.5(544A,272C) Informal discussion.** If the board considers it advisable, or if requested by the affected ~~registrant~~ licensee, the board may grant the ~~registrant~~ licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The ~~registrant~~ licensee may be represented by legal counsel at the informal discussion. The ~~registrant~~ licensee is not required to attend the informal discussion.

Unless disqualification is waived by the ~~registrant~~ licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing.

Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, ~~registrants~~ licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. ~~Registrants~~ Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a ~~registrant~~ licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

ITEM 5. Amend rule 193B—6.6(544A,272C) as follows:

**193B—6.6(544A,272C) Decisions.** The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

**6.6(1)** No change.

**6.6(2)** Revoke the architect's ~~registration~~ license. In the event of a revocation, the ~~registrant~~ licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be ~~registered~~ licensed architects.

**6.6(3)** Suspend the ~~registrant's registration~~ licensee's license as authorized by law.

**6.6(4)** Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:

*a. to k.* No change.

*l.* Whether the ~~registrant~~ licensee acted in bad faith.

*m.* The extent to which the ~~registrant~~ licensee cooperated with the board.

*n.* Whether the ~~registrant~~ licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of ~~registration~~ licensure.

**6.6(5)** No change.

**6.6(6)** Require reexamination, using one or more parts of the examination given to architectural ~~registrant~~ licensee candidates.

**6.6(7) and 6.6(8)** No change.

**6.6(9)** Issue a consent order.

Voluntary surrender of ~~registration~~ licensure is considered as disciplinary action.

[Filed 9/5/17, effective 11/1/17]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/27/17.